

2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

4 JULIO NEGRON,

5 Plaintiff,

6 -against-

Case No:  
7 18-CV-6645 (NGG) (SMG)

8 THE CITY OF NEW YORK, PATRICK O'CONNOR,  
9 IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES, AND  
10 ROBERT MOSCOSO, IN HIS INDIVIDUAL AND OFFICIAL  
CAPACITIES.

11 Defendants.

12 DATE: December 16, 2019

13 TIME: 10:18 a.m.

14  
15  
16  
17 DEPOSITION of the  
18 DEFENDANT, THE CITY OF NEW YORK, by a witness,  
19 LIEUTENANT STEVEN WEISS, taken by the Plaintiff,  
20 pursuant to a Subpoena and to the Federal Rules of  
21 Civil Procedure, held at the LAW OFFICES OF JOEL B.  
22 RUDIN P.C., Carnegie Hall Tower, 152 West 57th Street,  
23 8th Floor, New York, New York 10018, before  
24 Bonita Richards, a Notary Public of the  
25 State of New York.

1  
2 A P P E A R A N C E S:

3  
4 LAW OFFICES OF JOEL B. RUDIN, P.C.  
5 Attorneys for Plaintiff  
6 JULIO NEGRON  
7 CARNEGIE HALL TOWER  
8 152 West 57th Street  
8th Floor  
New York, New York 10019

9  
10 BY: JACOB LOUP, ESQ.

11 GEORGIA M. PESTANA  
12 NEW YORK CITY LAW DEPARTMENT  
13 CORPORATION COUNSEL  
14 Attorneys for Defendants  
15 THE CITY OF NEW YORK  
16 100 Church Street  
17 New York, New York 10007

18 BY: MORGAN C. MCKINNEY, ESQ.  
19 Assistant Corporation Counsel

20  
21  
22  
23  
24  
25 A L S O P R E S E N T:

MELANIE BRAVERMAN, ESQ.  
NEW YORK POLICE DEPARTMENT

1  
2  
3 F E D E R A L S T I P U L A T I O N S  
4  
56 IT IS HEREBY STIPULATED AND AGREED by and between  
7 the counsel for the respective parties herein that  
8 the sealing, filing and certification of the within  
9 deposition be waived; that the original of the  
10 deposition may be signed and sworn to by the witness  
11 before anyone authorized to administer an oath, with  
12 the same effect as if signed before a Judge of the  
13 Court; that an unsigned copy of the deposition may  
14 be used with the same force and effect as if signed  
15 by the witness, 30 days after service of the  
16 original & 1 copy of same upon counsel for the  
17 witness.18  
19 IT IS FURTHER STIPULATED AND AGREED that all  
20 objections except as to form, are reserved to the  
21 time of trial.22 \* \* \* \*  
23  
24  
25

1 S. WEISS

2 (Record Open)

3 (Whereupon, a call was placed to the  
4 chambers of Judge Gold.)

5 THE CLERK: Judge Gold's chambers.

6 MS. MCKINNEY: Hi.

7 This is Morgan McKinney for the  
8 defendants in Negron.

9 We also have Jacob Loup here for the  
10 plaintiff, as well as Lieutenant Weiss and  
11 Melanie Braverman, a representative from the  
12 NYPD.

13 THE CLERK: Okay, please hold.

14 JUDGE GOLD: Good morning.

15 Who's on for the plaintiff?

16 MR. LOUP: It's Jacob Loup, your Honor.

17 JUDGE GOLD: How are you?

18 Who's on for the defendant?

19 MS. MCKINNEY: Morgan McKinney, your  
20 Honor.

21 JUDGE GOLD: I understand that you're  
22 gathered to conduct a 30(B)(6) deposition.

23 MS. MCKINNEY: Yes, your Honor.

24 JUDGE GOLD: That the witness and court  
25 reporter are present.

1 S. WEISS

2 MS. MCKINNEY: Yes, your Honor.

3 JUDGE GOLD: That the plaintiff wishes to  
4 proceed, and that the defendants object to the  
5 deposition going forward.

6 MS. MCKINNEY: Yes.

7 JUDGE GOLD: Is that right?

8 MS. MCKINNEY: Yes.

9 JUDGE GOLD: I am going to allow the  
10 deposition to go forward, and I'm going to tell  
11 you why.

12 When a dispute arises under our local  
13 rules concerning discovery, a letter motion may  
14 be filed, after which the opposition, the other  
15 side, may have four days to respond.

16 This deposition was apparently  
17 scheduled for this morning for some time. I  
18 didn't get an objection to it until the Thursday  
19 before the Monday morning of the deposition. I  
20 didn't get a response to that objection until the  
21 Friday before the Monday morning of the  
22 deposition.

23 That does not give either the  
24 plaintiff enough time to fully respond, as  
25 they're entitled to under the rules, or the court

1 S. WEISS

2 to have one -- even one business hour when I was  
3 not in court, to review the material.

4 So, as far as I'm concerned, the  
5 motion was made too late. You can go ahead and  
6 do the deposition.

7 And if the City has an objection and  
8 thinks that they're entitled to some relief  
9 because of the deposition, you can make whatever  
10 motion for whatever reason you can conjure after  
11 it's completed.

12 Anything further from the defendant?

13 MS. MCKINNEY: Your Honer, we'd just like  
14 to note for the record, that the defendants have  
15 now been able to find both roll-calls for the  
16 104th Precinct, and plaintiff has had an  
17 opportunity to review them.

18 So, our position is going to be that  
19 any testimony regarding searches that were  
20 conducted for the roll-calls or retention  
21 policies related to the roll-call would be deemed  
22 moot.

23 Our position is also that the  
24 Declaration that was provided to the plaintiffs  
25 on December 6th of 2019 is sufficiently detailed.

1 S. WEISS

2 JUDGE GOLD: Is the court reporter

3 getting this down, by the way?

4 THE REPORTER: Yes, your Honor.

5 MS. MCKINNEY: Yes, your Honor.

6 JUDGE GOLD: Great.

7 So, why don't you include in your  
8 presentation to me, why it took so long and why  
9 you didn't move to preclude the deposition until  
10 less than 48 business hours before it was  
11 scheduled to begin?

12 MS. MCKINNEY: Just to briefly mark for  
13 the record, your Honor, because it was my  
14 understanding that unless the defendants were  
15 able to produce the Declaration and these  
16 roll-calls, the deposition would still be going  
17 forward.

18 That's why we moved for a Protective  
19 Order at that time, because our understanding was  
20 once that final Declaration was produced on  
21 December 6th, 2019 we would be relieved of our  
22 obligation because --

23 JUDGE GOLD: If it was produced on  
24 December 6th, whey didn't you move on  
25 December 6th, so there would have been enough

1 S. WEISS

2 time to address it?

3 MS. MCKINNEY: Because plaintiff's  
4 counsel did not make us aware that they felt that  
5 the Declaration was deficient until December 9th,  
6 your Honor.

7 JUDGE GOLD: Until December 9th, all  
8 right.

9 So, why did you not move until the  
10 afternoon of December 12th --

11 MS. MCKINNEY: Due to the fact that I --

12 JUDGE GOLD: -- with the deposition  
13 coming up on the 16th?

14 MS. MCKINNEY: Due to the fact that I  
15 have a very busy case load, your Honor. And that  
16 was the --

17 JUDGE GOLD: So, do I.

18 MS. MCKINNEY: -- I had to --

19 JUDGE GOLD: So, do I.

20 Why did you give the Court less than  
21 24-hours or 24-hours, basically, to read the  
22 three letters, make a ruling, and spare you  
23 coming in today?

24 If it took you three or four days, why  
25 would you assume the Court to react quicker?

1 S. WEISS

2 MS. MCKINNEY: Because your Honor, I

3 thought that --

4 JUDGE GOLD: Next time, present your  
5 motion as soon as the issue arises. The  
6 deposition will go forward.

7 Anything further from the plaintiff?

8 MR. LOUP: No, your Honor.

9 JUDGE GOLD: Goodbye.

10 000

11 LIEUTENANT STEVEN WEISS, called  
12 as a witness, having been first duly sworn by a  
13 Notary Public of the State of New York, was examined  
14 and testified as follows:

15 EXAMINATION BY

16 MR. LOUP:

17 Q. State your name and address for the record,  
18 please.

19 A. Lieutenant Steven Weiss. One Police Plaza,  
20 New York, New York 10038.

21 Q. Good morning, Lieutenant Weiss.  
22 This is a lawsuit brought in the  
23 United States District Court, the Eastern District of  
24 New York on behalf of Julio Negron, who alleges he was  
25 unjustly convicted for a shooting that happened in 2005.

1 S. WEISS

2 This deposition is taking place under  
3 Federal Rule of Civil Procedure 30(B)(6). As you know,  
4 it was ordered by the court.

5 The purpose of the deposition is to allow  
6 plaintiff to inquire into what we believe to be defendant's  
7 failure so far to produce documents of the NYPD, in  
8 response to plaintiff's discovery demands.

9 MR. LOUP: Let me just put on the record,  
10 that before this deposition started, defendant's  
11 counsel took the position that the deposition  
12 shouldn't start until we could call the Court,  
13 seeking a ruling on defendant's Motion of  
14 December 12th, 2019, seeking a Protective Order.

15 And we did have a phone call with  
16 Judge Gold before we began, and he ruled that the  
17 deposition should go forward.

18 MS. MCKINNEY: I'd also just like to mark  
19 for the record, since I did not get the  
20 opportunity to bring this objection up with the  
21 Judge as well in our previous phone call, is that  
22 defendants do reserve the right to move the Court  
23 in previous time, for relief of their obligation  
24 to pay in whole for this 30(B)(6) deposition, in  
25 consideration of the fact that both roll-calls

1 S. WEISS

2 have now been found prior to the start of this  
3 deposition.

4 And it's the defendant's position that  
5 the Declaration of Lieutenant Weiss, that was  
6 previously provided to plaintiff's counsel on  
7 December 6th, 2019, is sufficient.

8 Q. Lieutenant Weiss, is there any physical or  
9 medical reason why you are not able today to testify about  
10 the matters that I just mentioned that this deposition is  
11 about?

12 A. No.

13 Q. If I ask you a question that seems unclear  
14 to you or that you'd like to have rephrased, you may and  
15 should ask me to rephrase it.

16 Do you understand that?

17 A. Yes.

18 Q. If you give an answer and upon reflection  
19 you believe it is in some way inaccurate or incomplete, you  
20 may and should complete or correct your answer.

21 Do you understand that?

22 A. Yes.

23 Q. Ms. McKinney from the City Law Department  
24 is representing you here today?

25 A. Yes.

1 S. WEISS

2 Q. Did you meet with Ms. McKinney to prepare  
3 for this deposition?

4 A. Yes.

5 Q. How many times?

6 A. One time.

7 Q. When was that?

8 A. Last Friday.

9 THE WITNESS: Is that right?

10 MS. MCKINNEY: Yes.

11 Q. During that meeting, did you review any  
12 documents in preparation for the deposition?

13 A. Yes.

14 Q. Which documents?

15 A. Department procedures related to retention  
16 of files.

17 Q. Did you review any other documents?

18 A. I don't believe we did, no.

19 Q. Which department procedures regarding  
20 retention of files did you review?

21 A. An Operations Order from 2017, that gives  
22 direction on what can be retained and what can be  
23 destroyed, and then some Administrative Guide procedures  
24 related to document destruction, and a memo from the -- I  
25 want to say, from the Office of Management Analysis and

1 S. WEISS

2 Planning regarding retention of detective squad files.

3 Q. Were any of those policies in effect as of  
4 2005 or 2006?

5 A. No -- I should tell you, so the policies we  
6 reviewed were issued after 2005. I don't know if they  
7 were -- if there was a policy similar to that in 2005. But  
8 the policies I reviewed themselves were not.

9 Q. You didn't review any policies that were in  
10 effect as of 2005?

11 A. Correct.

12 Q. What is your current position?

13 A. Lieutenant, Commander of 104th Precinct  
14 Detective Squad.

15 Q. How long have you been with the NYPD?

16 A. 20 years and six months.

17 Q. You started in 1999?

18 A. Yes.

19 Q. What was your first position?

20 A. After graduating the police academy, I was  
21 assigned to the 67th Precinct in Brooklyn.

22 Q. That was as a patrol officer?

23 A. Yes.

24 Q. How long were you in that position?

25 A. I had several assignments at the precinct.

1 S. WEISS

2 I was there until I was promoted to  
3 sergeant in September of 2005, maybe August of 2005.

4 Q. What was your next position after that?

5 A. I was a sergeant in the 81st Precinct, also  
6 in Brooklyn.

7 Q. How long were you in that position?

8 A. I was there until April of 2009.

9 Q. What was your next position after that?

10 A. I was assigned as lieutenant in the  
11 71st Precinct in Crown Heights, Brooklyn.

12 Q. How long were you in that position?

13 A. I was there until July of 2014.

14 Q. Your next position after that?

15 A. After that, I was assigned, for a short  
16 period of time, as commander of the Queens Night Watch  
17 Squad.

18 It was for like a month.

19 Q. After that?

20 A. I was assigned as the commanding officer of  
21 the 115th Precinct Detective Squad.

22 Q. How long were you in that position?

23 A. I was there until, I want to say  
24 March of 2008.

25 Q. And after that?

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A. After that I was assigned to the Office of the Chief of Crime Control Strategies at headquarters.

**Q.** You said "headquarters"?

A. Yes, Headquarters.

**Q.** How long were you in that position?

A. About 13 months.

**Q.** What was your position after that?

9                   A.       After that, I was assigned for a brief  
10                  period of time as the commanding officer of the 111th  
11                  Precinct Detective Squad.

Q. How long were you in that position?

A. Two months, maybe.

Q. After that?

15                   A.       Then I was assigned to the 104th Precinct  
16 Detective Squad.

**Q.** When were you assigned to the 104th?

Q. Of 2019?

A. Yeah, of 2019.

22                   **Q.** I'm sorry, so when you said -- I think  
23 maybe I wrote this down incorrectly.

24 But you said you were the "commanding  
25 officer of 115 Precinct Detective Squad" as of "March 2018"

1 S. WEISS

2 not 2008?

3 A. No, I was there until 2018, until  
4 March 2018, and then I moved on to Crime Patrol Strategies.

5 Q. Okay.

6 If you wrote in your Declaration that you  
7 submitted in this case, that you had been the commanding  
8 officer of the 104th since June 27th, 2019 --

9 A. That might be correct.

10 When I did this, I might have actually  
11 looked at the orders. So, that's probably when I was  
12 officially assigned there.

13 MR. LOUP: Let's just mark this as an  
14 Exhibit 1.

15 (Whereupon, Plaintiff's Exhibit 1, a  
16 seven-page Declaration of Lieutenant Steven Weiss  
17 dated November 27th, 2019, is marked for  
18 identification, as of this date.)

19 Q. Lieutenant, I'm showing you what's been  
20 marked as Plaintiff's Exhibit 1.

21 (Whereupon, the witness reviews Plaintiff's  
22 Exhibit 1.)

23 Q. Do you recognize that document?

24 A. Yes.

25 Q. What is it?

1 S. WEISS

2 A. It's a Declaration that I prepared for this  
3 case.

4 Q. That's signed by you, dated  
5 November 27th, 2019?

6 A. Yes.

7 Q. And you're familiar with this document,  
8 you've had a chance to review it recently?

9 A. Yes.

10 Q. According to this Declaration, you  
11 conducted your own search for records in this case,  
12 correct?

13 A. Yes.

14 Q. In preparing for this deposition, did you  
15 inquire as to any efforts by other persons to locate NYPD  
16 documents --

17 MS. MCKINNEY: Objection.

18 Q. -- in response to plaintiff's discovery  
19 request?

20 MS. MCKINNEY: Objection.

21 Q. If she objects, you can still answer unless  
22 she instructs you not to.

23 A. I did, yes.

24 Q. Did you learn about any such efforts by  
25 other persons?

1 S. WEISS

2 MS. MCKINNEY: Objection.

3 A. I learned that there -- that another  
4 detective had been contacted to try to find these records.

5 Q. What was the name of that detective?

6 A. Louis Ledado.

7 Q. Did you learn whether he had in fact  
8 searched for records?

9 MS. MCKINNEY: Objection.

10 A. He -- yes, I did.

11 Q. Did he search for those records before you  
12 conducted your search --

13 MS. MCKINNEY: Objection.

14 Q. -- as far as you know?

15 A. I don't know.

16 Q. Do you know whether he found any records?

17 MS. MCKINNEY: Objection.

18 A. As far as I know, he did not.

19 Q. Did you learn about any other efforts by  
20 anybody else, to locate NYPD documents in response to  
21 plaintiff's discovery request?

22 MS. MCKINNEY: Objection.

23 A. No.

24 Q. Only Detective Ledado?

25 A. Correct.

1 S. WEISS

2 Q. Are you aware of any searches, other than  
3 those conducted by Detective Ledado and those you described  
4 in your Declaration, Exhibit 1, for NYPD records requested  
5 by plaintiff in this case?

6 MS. MCKINNEY: Objection.

7 A. No.

8 Q. Are you aware of any policies or routine  
9 practices of the NYPD in 2005 or 2006, regarding documents  
10 produced during the course of a police investigation?

11 MS. MCKINNEY: Objection.

12 A. Policy -- just so I understand what you're  
13 asking, you're asking if I know what policies were in place  
14 in 2005 and '06, regarding retention of records?

15 Q. Yes.

16 A. I do not.

17 Q. Are you aware whether any policies were in  
18 the Patrol Guide at the time, regarding retention of  
19 documents produced during investigations?

20 MS. MCKINNEY: Objection.

21 A. No.

22 Q. Are you aware of any practices of the  
23 104th Precinct, as of 2005 and 2006, regarding the  
24 retention of documents produced during police  
25 investigations?

1 S. WEISS

2 MS. MCKINNEY: Objection.

3 A. No.

4 Q. In preparation for this deposition, did you  
5 inquire as to any such policies or practices of the  
6 104th Precinct?

7 MS. MCKINNEY: Objection.

8 A. No.

9 MS. MCKINNEY: Off the record.

10 (Whereupon, a short recess was taken.)

11 MR. LOUP: Back on the record.

12 MS. MCKINNEY: So, I know that on  
13 December 12, 2019 we formally objected to the  
14 scope of plaintiff's 30(B)(6) deposition noticed in  
15 this matter. I'd like to formally do that again  
16 on the record for this deposition.

17 So, we're going to object and limit  
18 the scope of today's deposition to  
19 Lieutenant Weiss's testimony about his personal  
20 experience of the practices for record retention  
21 polices for case files of the NYPD back in 2005,  
22 as well as his personal search for the Negron  
23 case file in this matter. And that is what we  
24 are limiting the scope of his testimony to speak  
25 to.

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And again, just as a point of clarification, he did review NYPD policies and practices, the most recent ones that could be found. Additional time would be needed to search for the actual written policies to be able to produce those.

However -- and Lieutenant Weiss, you can speak to this if you're asked this question -- but my understanding is that based on his personal review of those policies and his understanding of the practices of the NYPD, that they wouldn't be significantly different.

And to the extent you would need any clarification, we could pull those older policies, but we would need more time. As my understanding is it would generally take weeks to try to get a hold of those.

MR. LOUP: Okay.

I will just put on the record that the procedure of a Rule 30(B)(6) deposition under the Federal Rules, is that the party taking the deposition notices topics to be inquired into at the deposition.

And the party being deposed has an

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obligation to designate officers, officials who can testify on behalf of the organization about the questions noticed in the deposition. So, the party being deposed has an obligation to prepare witnesses to testify about the matters laid out in the deposition notice.

So, that's why I'm asking

Lieutenant Weiss not only about the particular search he conducted or his personal knowledge, but any knowledge of other searches or any knowledge of other policies he may have obtained in preparing for this deposition, which is the procedure contemplated by the rule.

MS. MCKINNEY: Well, I will also --

MR. LOUP: You're saying that you're designating him solely to testify about his personal -- the searches he personally undertook, I guess that's fair. But --

MS. MCKINNEY: In addition to his understanding of the practices of the NYPD for records retention. So, he can speak to more than that.

And just to also mark for the record,  
my understanding for the procedures of a 30(B)(6)

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is that, should a party oppose the scope of the notice, it should be done so prior to the deposition, which has now been done.

We notified you that we take issue with how expansive your notice was, in terms of what you would be asking Lieutenant Weiss to testify to today.

We formally objected in front of the Court.

And even Judge Gold stated today on the record, that we may make any objections that we would like regarding the scope and then litigate the issue when the court has more time to review it, which is what we are doing now.

So, we notified you that we would be taking issue with the scope of this deposition. So, that shouldn't be coming as a surprise to you. And we do believe it's reasonable for Lieutenant Weiss to testify to what his personal understanding was, based on his 20-years of experience at the NYPD, of what the retention policies were in 2005.

And to the extent that you need a formal policy produced about what the actual

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written policy was of the NYPD in 2005, that can easily be done through a documents production.

But he can testify here today about the practices of the NYPD, and his understanding of what that was during that time period, which again should fully cover the scope of this limited court ordered 30(B)(6) Deposition, after an appropriate declaration, as well as both roll-calls were already produced.

MR. LOUP: So, I just want to be clear.

So, defendant's position is that Lieutenant Weiss is not being designated to answer all the questions that we put in our Rule 30(B)(6) Deposition Notice?

So for instance, when we say on page three at the top, "provide the names and titles of all persons who conducted a search for responsive documents", he has not been designated as a witness that's going to testify about that matter?

MS. MCKINNEY: No, he shouldn't be required to testify to that matter as that's far too broad.

MR. LOUP: Well, he's not necessarily

1                           S. WEISS

2                           required to testify about that matter.

3                           But under Rule 30(B)(6) and our  
4                           understanding of the court's order, defendants  
5                           are required to produce witnesses, it can be a  
6                           single witness, it can be multiple witness, who  
7                           can answer the questions in this notice. I mean,  
8                           including, for instance, "provide the names and  
9                           titles of all persons who conducted a search for  
10                          response of documents."

11                          I don't know if you would argue that  
12                          that inquiry is unreasonable. But in any case,  
13                          I'm just trying to make sure I understand that  
14                          you have not designated Lieutenant Weiss to  
15                          testify to that question, for instance.

16                          MS. MCKINNEY: He testified to his  
17                          understanding previously, which is also currently  
18                          my understanding of the two individuals who  
19                          conducted the search, which was himself and  
20                          Louis Ledado.

21                          MR. LOUP: So, that's what I'm asking.

22                          So, from what I understand --

23                          MS. MCKINNEY: But to the extent you're  
24                          asking him -- and again, I don't want to get into  
25                          the semantics and I don't want this entire

1 S. WEISS

2 deposition transcript to just be objections.

3 Would you like to go off the record  
4 for a moment?

5 MR. LOUP: Sure.

6 Off the record.

7 (Whereupon, an off-the-record discussion was  
8 held.)

9 MR. LOUP: Back on the record.

10 CONTINUED EXAMINATION

11 BY MR. LOUP:

12 Q. So, I want to just be clear, we covered  
13 this ground a little bit before all the objections, but I  
14 just want to make sure that we're clear.

15 So Lieutenant, are you aware of any  
16 policies, as of 2005 or 2006, that governed document  
17 retention or destruction at the 104th Precinct?

18 A. No.

19 MS. MCKINNEY: Objection.

20 Q. Are you aware of any such policies in  
21 effect before 2010?

22 A. No.

23 MS. MCKINNEY: Objection.

24 Q. Are you aware of any such policies in  
25 effect since the present day?

1 S. WEISS

2 A. Yes.

3 Q. Well, as of the present day?

4 A. Yes.

5 Q. What are those policies?

6 A. So, in regards to record retention, there  
7 is an Operations Order that is published that gives  
8 direction to precinct commanders and other commanding  
9 officers, as to what documents are permissible to be  
10 destroyed and what documents have to be retained. And a  
11 date or year to which the document has to be retained is  
12 published in that order. And then there's some direction  
13 as to like how to destroy it.

14 Q. Is there a number associated with that  
15 order?

16 A. It's Operation Order 13 of 2017.

17 Q. Are you aware of any similar orders in  
18 effect, before 2017?

19 MS. MCKINNEY: Objection.

20 A. I'm aware there were, I don't know  
21 specifically what they were.

22 Q. Are there any other policies you're aware  
23 of in effect since 2010, that govern the document retention  
24 and destruction policies at the 104th Precinct?

25 MS. MCKINNEY: Objection.

1 S. WEISS

2 A. Yes, there is a memo that was circulated  
3 by -- I'm going to take a look.

4 THE WITNESS: Is that all right?

5 MS. MCKINNEY: Yes.

6 A. Just to refer, it was published in  
7 July of 2017, and it came from the Records Management Unit.

8 And it was specifically directed to  
9 detective squads in precincts. And it specified what  
10 records needed to be retained and what records was  
11 permissible to destroy.

12 Q. It looks like you brought the records that  
13 you're testifying about right now.

14 A. Yes.

15 Q. Copies of he policies that is.

16 A. Yes.

17 MR. LOUP: Can we have copies of them?

18 MS. MCKINNEY: Sure.

19 Q. Lieutenant, do you know whether these  
20 policies are publically available?

21 A. So the memo, probably not I would say.

22 These are Administrative Guide Policies, I  
23 know our Patrol Guide is published on the internet, I don't  
24 know either way whether the Administrative Guide is  
25 published or not.

1 S. WEISS

2 Q. When you say "the Administrative Guide", is  
3 that something we discussed already or that's something  
4 that we haven't discussed?

5 A. The department has a couple of guides.  
6 There's a Patrol Guide, there's an Administrative Guide.

7 Q. We discussed the Operations Order?

8 A. Correct.

9 So, the other --

10 MR. LOUP: So, lets just mark the  
11 Operations Order. That will be Exhibit 2.

12 (Whereupon, Plaintiff's Exhibit 2, a  
13 six-page Operations Order dated March 13, 2017,  
14 is marked for identification, as of this date.)

15 MS. MCKINNEY: Also, defendant's reserve  
16 the right to mark any of these exhibits as  
17 confidential, to the extent it's later learned  
18 that this is not public information by the NYPD.

19 MR. LOUP: That's fine.

20 I'd like to add that we have a  
21 confidentiality stipulation governing the  
22 procedure for marking documents confidential in  
23 deposition testimony.

24 Q. Lieutenant Weiss, I'm showing you what's  
25 been marked as Exhibit 2.

1 S. WEISS

2 (Witness review Plaintiff's 2.)

3 Q. Is that the Operations Order that you were  
4 just discussing?

5 A. It is, yes.

6 MR. LOUP: Off the record.

7 (Whereupon, an off-the-record discussion was  
8 held.)

9 MR. LOUP: Back on the record.

10 Can we mark these as Exhibits 3, 4, 5,  
11 and 6, please.

12 (Whereupon, Plaintiff's Exhibit 3, a  
13 two-page NYPD memo dated July 27, 2017, were  
14 marked for identification, as of this date.)

15 (Whereupon, Plaintiff's Exhibit 4,  
16 Administrative Guide, 2 pages, dated December.  
17 8, 2017, were marked for identification.)

18 (Whereupon, Plaintiff's Exhibit 5,  
19 Administrative Guide, 4 pages, dated.  
20 January 1, 2019, marked for identification.)

21 (Whereupon, Plaintiff's Exhibit 6,  
22 Administrative Guide, 1 page, dated January 4,.  
23 2019, were marked for identification.)

24 Q. Lieutenant, I'm showing you what's been  
25 marked Plaintiff's Exhibit 3.

1 S. WEISS

2 Q. Is that the memo circulated in July 2017,  
3 that you referred to earlier in your testimony?

4 A. Yes.

5 Q. What other policies are you aware of in  
6 place since 2010, governing the 104th Precinct's retention  
7 or destruction of documents?

8 MS. MCKINNEY: Objection.

9 A. There were a few Administrative Guide  
10 procedures that have -- that reference the destruction and  
11 retention of documents. They're not specifically about  
12 that, but there's reference to it in the policy.

13 Q. Corporation Counsel produced  
14 three documents with the title "Administrative Guide", that  
15 we've had marked as Exhibits 4, 5, and 6. I'm showing you  
16 those.

17 (Whereupon, the witness reviews Plaintiff's  
18 Exhibits 4, 5, and 6.)

19 Q. Are those the Administrative Guides you  
20 were referring to?

21 A. Yes.

22 Q. Are you aware of any other policies in  
23 effect since 2010, that govern the 104 Precinct's retention  
24 or destruction of documents?

25 MS. MCKINNEY: Objection.

1 S. WEISS

2 A. I am not.

3 Q. Are you aware whether in 2005 and 2006 the  
4 104th Precinct had a policy or practice of scanning any  
5 documents, to store them digitally?

6 MS. MCKINNEY: Objection.

7 A. I am not.

8 Q. Are you aware of any such policy in effect,  
9 prior to 2010?

10 MS. MCKINNEY: Objection.

11 A. No.

12 Q. Are you aware of any such policy in effect,  
13 after 2010?

14 MS. MCKINNEY: Objection.

15 A. No -- yes.

16 Q. What's that policy?

17 A. So, our Evidence Case Management System,  
18 which is how we maintain case files now, does have a  
19 function in it where you can scan documents into the case  
20 files and they save as PDF's.

21 Q. Is there any policy or practice of  
22 requiring that documents be scanned into that system?

23 MS. MCKINNEY: Objection.

24 A. Yes.

25 Q. Under what circumstances?

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MS. MCKINNEY: Objection.

A. So, any -- when a detective conducts an investigation, they -- documents are sometimes produced that are not computerized yet, whether it be written documents or documents that were printed out for them or documents that they print out from a computer system that can't PDF the files, and those will get scanned into the -- what we call DD5, which is the detectives follow-up.

So, it will get attached and attachments, and the detective may reference, for example, a written statement from a defendant that he spoke to. And that he would scan that in, like a QR code, and it attaches it to that particular DD5 as a PDF.

**Q.** Were there any policies or practices of the 104th Precinct, in effect since 2010, regarding scanning closed case files into digital storage?

MS. MCKINNEY: I'm going to object and instruct the witness not to answer. Because again, the scope of this is already outside of what would be relevant to this case.

From 2010 to the present, in terms of scanning documents, he's already testified that he's not aware if they had an electronic scanning policy back in 2005. So, to be asking questions

1                           S. WEISS

2                           now about policies from 2010 to the present,  
3                           regarding any digital or electronic information  
4                           would be irrelevant.

5                           MR. LOUP: Your position is you're not  
6                           going to let him answer that question because  
7                           it's irrelevant?

8                           MS. MCKINNEY: And it's outside of a  
9                           reasonable scope for this 30(B)(6) deposition.  
10                          Because what does a 2010 electronic policy have  
11                          to do -- storage have to do with documents  
12                          related to this case?

13                          MR. LOUP: Well, I'll tell you.

14                          But first, the procedure for objecting  
15                          during a deposition, is to object and then let  
16                          the witness answer unless it's a privileged  
17                          objection.

18                          So if this isn't a privileged  
19                          objection, why can't he answer that question?

20                          MS. MCKINNEY: I'm objecting because it's  
21                          outside of the scope -- of a reasonable scope of  
22                          a 30(B)(6) deposition.

23                          I'm instructing him not to answer for  
24                          that reason.

25                          MR. LOUP: You think all this stuff that

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I'm asking is outside the scope. And you reserved the right to make a position to the court on that basis.

MS. MCKINNEY: I'm not saying "Everything."

I'm saying you're permitted to ask him about policies and practices of the NYPD, from 2005 and maybe at most to 2006, which would be the date of Mr. Negron's trial, criminal trial, as to the retention policies of the NYPD.

Anything beyond those dates, should be outside the scope of this 30(B)(6) deposition and I'm going to instruct him not to answer.

MR. LOUP: Okay.

The question I just asked him was,  
whether since 2010 there's a policy under which  
the 104th Precinct scans closed detective  
files -- documents from closed cases.

That's obviously relevant here, right?

MS. MCKINNEY: Sure, yes.

You know what, I can agree to that.

That's fine.

To the extent you ask questions about if it would be related to closed case files, I

1                           S. WEISS

2                          wouldn't have a means to object. But anything  
3                          just related to any policy that would be not  
4                          within February 6th, 2005 and March of 2006,  
5                          would be outside the scope.

6                          MR. LOUP: You also told me he doesn't  
7                          know about those policies, but that the policies  
8                          he's describing, you believe they wouldn't be  
9                          significantly different back then. He knows  
10                         about current policies. I mean, he doesn't know  
11                         about old policies.

12                         So, I'm asking him about what he knows  
13                         about. He brought these documents with him for a  
14                         reason.

15                         MS. MCKINNEY: I understand, let's  
16                         continue.

17                         Can you just read back the last  
18                         question?

19                         (Whereupon, the referred-to question was  
20                         read back by the reporter.)

21                         Q. Can you answer that question?

22                         A. Not that I'm aware of.

23                         Q. Lieutenant, you agree that many documents  
24                         are produced during a police investigation of a shooting?

25                         MS. MCKINNEY: Objection.

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2 A. Yes.

3 Q. Can you please list all the locations in  
4 the NYPD that you're aware of, where documents related to  
5 such an investigation might possibly have been stored in  
6 2005 and 2006?

7 MS. MCKINNEY: Objection.

8 A. So, in the detective squad, in a case file,  
9 after the case is closed in storage, whether it be in the  
10 precinct storage area or eventually documents were stored a  
11 in a storage facility in New Jersey, the district  
12 attorney's office potential could have files.

13 So, some other files of like the -- so some  
14 of our documents back then were snap out forms, you know,  
15 the whole carbon copy and everything. So, a lot of those  
16 documents had multiple copies. So, the original would stay  
17 with the detective file and a copy would go somewhere else,  
18 and it was on the bottom of the file of where it would go.  
19 But they were all the same document, it was just  
20 different -- pink copy with this one, there's a green copy  
21 with another one.

22 So, I think a property clerk's invoice or  
23 copy could go to the property clerk's office, a copy would  
24 stay in the precinct, a copy would then go to the district  
25 attorney's office. If it's personal property that was

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2 invoiced, a copy would go to the person it was removed  
3 from.

4 So, there's different places that parts of  
5 it would go, but everything -- all of those parts would  
6 come together in that file, that detective squad file.  
7 Everything would be in there.

8 Q. What do you mean when you say "detective's  
9 file?"

10 MS. MCKINNEY: Objection.

11 A. So, generally for cases, and every  
12 detective is little bit different how they keep their  
13 files, but in a case that was going to have a lot of  
14 documents in it, such as a shooting, they would have like  
15 an accordion type file and they would put the documents in  
16 it. Some of the detectives are more detailed oriented  
17 would section them off, some of them wouldn't. And  
18 everything would go in there.

19 Q. You just testified that duplicate or maybe  
20 triplicate forms from carbon copies in certain cases would  
21 go to different areas of the NYPD bureaucracy.

22 Did I understand that correctly?

23 A. Yes.

24 MS. MCKINNEY: Objection.

25 Q. Did you inquire in this case as to the

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2 existence of any such duplicate or triplicate forms that  
3 were produced and stored in different areas of the NYPD?

4 MS. MCKINNEY: Objection.

5 A. Yes.

6 Q. Which inquiries did you make?

7 A. I made a request of the criminal records  
8 section, to see if they had any DD5's that were related  
9 documents for the complaint report numbers that were  
10 provided to me. And I checked those electronically also.

11 Q. Before we proceed with that, I just want to  
12 make sure that I know what cases we're talking about.

13 You said "complaint numbers", is that what  
14 you said?

15 A. Yes.

16 Q. Do you understand that our request was for  
17 documents relating to two separate investigations?

18 MS. MCKINNEY: Objection.

19 A. So, there was an original request I  
20 received for the Negron file. And then there was  
21 subsequent requests for any documents related to  
22 Monica Guartan and --

23 Q. Fernando Caban?

24 A. -- Fernando Caban, yes.

25 Q. So, when you're discussing the searches

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2 that you personally undertook today, your answers cover  
3 both the Negron file and the Caban, Guartan file, or did  
4 you do different things for those -- in searching for those  
5 two --

6 MS. MCKINNEY: Objection.

7 Q. -- documents related to those two cases?

8 A. They were done separately, but eventually  
9 the same steps were taken for both.

10 Q. When you say "the same steps were taken for  
11 both", do you mean you in particular took the same steps  
12 for both?

13 MS. MCKINNEY: Objection.

14 A. Correct.

15 Q. So, when you made a request to the criminal  
16 records section, did you do so for both the Negron  
17 investigation and the Caban, Guartan investigation?

18 A. Yes.

19 Q. What is the criminal records section?

20 MS. MCKINNEY: Objection.

21 A. The criminal records section is -- so my  
22 understanding of exactly what they do is somewhat limited.  
23 However, if there's old documents related to 61's, which  
24 would eventually produce DD5's, those detective follow-ups.

25 At some point they were getting one of

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2 those carbon copies I had mentioned earlier, and they were  
3 keeping them on file, my understanding is on microfilm.  
4 And so if you needed those documents, you could request  
5 them through there and that's what I did.

6 Q. I believe you wrote in your Declaration  
7 that they did not have any responsive documents?

8 MS. MCKINNEY: Objection.

9 A. Other than the complaint report, the  
10 original complaint report, they did not, no.

11 Q. I may not have fully understood.

12 You said when 61's are produced, those go  
13 to the criminal records section? A copy of that goes to  
14 the criminal records section?

15 MS. MCKINNEY: Objection.

16 A. So, my understanding of the process is  
17 somewhat limited. But my understanding of the process is  
18 this, and so it's different -- it's somewhat different now  
19 because everything's electronic right now.

20 So, the complaint reports were generated  
21 electronically through the complaint system. If a  
22 detective squad case was generated for a complaint, because  
23 they're not on all of them, when the detective squad  
24 complaint investigation was complete -- and this was when  
25 we were using the typed DD5's, not the computerized ones --

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2 that a copy of that DD5 was a snap out of three or four,  
3 would be forwarded to that criminal records section. And  
4 they would file it however their policies and procedures  
5 are.

6 Q. So, your understanding is that as of 2005  
7 and 2006, a copy of both the UF61 and any follow-up DD5's  
8 from a detective squad investigation, would be sent to the  
9 criminal records section and stored by them, possibly on  
10 microfilm?

11 MS. MCKINNEY: Objection.

12 A. Yes.

13 Q. Do you know who at the criminal records  
14 section conducted the search that you requested in this  
15 case?

16 MS. MCKINNEY: Objection.

17 A. So I know, yes, I don't remember the names.

18 Q. Do you know what steps they took to find  
19 the records you requested?

20 MS. MCKINNEY: Objection.

21 A. I don't know what their practices are, as  
22 far as retrieving records.

23 Q. Do you know what steps they actually did  
24 take or did not take in this case --

25 MS. MCKINNEY: Objection.

1 S. WEISS

2 Q. -- regarding the records you requested?

3 MS. MCKINNEY: Objection.

4 A. I do not know.

5 Q. When did you make that request?

6 MS. MCKINNEY: Objection.

7 A. So, I made two separate requests.

8 First was for the Caban file -- excuse me.

9 The first was for the Negron file. I don't know the date  
10 of that. And I received a response from them that they  
11 didn't have anything.

12 And then subsequent I was asked to search  
13 for these additional files, Caban and Guartan. I made a  
14 request of those recently, and also received a negative  
15 response.

16 Q. Do you remember the date you made the  
17 request?

18 A. I don't know.

19 Q. Do you remember the month?

20 A. It was November or December.

21 Q. Did you make requests of any other areas in  
22 the NYPD, for records relating to the Negron or Caban,  
23 Guartan investigations?

24 MS. MCKINNEY: Objection.

25 A. So, I queried our Evidence Case Management

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2 System, ECMS, and discovered that there was no case in  
3 there. So, the case was -- the investigation was conducted  
4 prior to that system coming online.

5 I checked just to make sure. And so --  
6 repeat the question again.

7 MR. LOUP: Can you read back the  
8 question?

9 (Whereupon, the referred-to question was  
10 read back by the reporter.)

11 A. Requests, no.

12 Q. Did you inquire as to the existence of any  
13 documents relating to those two investigations, in the  
14 possession of the property clerk?

15 MS. MCKINNEY: Objection.

16 A. The property clerk, no.

17 Q. Did you make any requests for such  
18 documents of the Borough Robbery Squad?

19 MS. MCKINNEY: Objection.

20 A. No.

21 Q. As of 2005 and 2006, was it the policy or  
22 practice of the NYPD that documents sent outside of a  
23 precinct, that a record of that transference of documents  
24 would be made in any way?

25 MS. MCKINNEY: Objection.

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A. Sent outside the precinct documents, so what -- you're going to have to kind of clarify.

So, what documents are you referring to, because there's a lot of documents that are sent outside the PD, for everything from letters, to complaints, to case files.

So, which -- ask me a specific and I'll tell you what I know.

Q. As of 2005 and 2006, was there a policy or practice of making a record if a detective's file was delivered to some person or agency outside of the precinct where the file was generated?

MS. MCKINNEY: Objection.

A. So, I would say that the detective files were filed in boxes and put in storage through a private company that was contracted by the NYPD. And that's where they remained. And that is cataloged as to what's in the boxes with box numbers.

If you're referring to sending it out to some other agency, there really is not a policy or practice that I'm aware of where you document like an entire file was handed over to like the DA's office or the FBI or whoever else might want our files.

Q. So, as of 2005 or 2006, as far as you're

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2 aware, there was no policy or practice of documenting when  
3 a detective's file was delivered to a prosecutor's office?

4 MS. MCKINNEY: Objection.

5 A. Correct.

6 Q. During that same period, was there any  
7 policy or practice of making a record if the detective's  
8 file was returned to the precinct from the prosecutor's  
9 office?

10 MS. MCKINNEY: Objection.

11 A. No.

12 But I will backtrack a little bit and say,  
13 so from time to time other units will take records. There  
14 is a form.

15 So, sometimes like a unit will take like  
16 a -- mostly it's cold case files, homicides from 20 to  
17 30 years ago. And they do fill out a form and it doesn't  
18 get recorded when it comes back.

19 I can't answer as to whether -- like in my  
20 experience, there's never been anything that documents that  
21 like leaving of a file at the district attorney's office.  
22 But there is a form, I don't know if it -- I don't want to  
23 say there isn't, because it may cover that. I just don't  
24 know the answer.

25 Q. What is the record that is made that you

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2 just described of when a file is delivered to the  
3 outside storage company?

4 MS. MCKINNEY: Objection.

5 A. It's an electronic database.

6 So, the company is called GRM or GMR, one  
7 of those two. And so the files are boxed, a sticker is  
8 generated with a unique serial number on it, and then in  
9 the computer application, web-based computer application,  
10 we enter the number, the unit, and then a brief description  
11 of what's in the box.

12 So, it might say "2005 roll call."

13 Q. I didn't hear that.

14 A. It might say "2005 roll calls", or it might  
15 say "2006 payroll records", whatever is in the box. A  
16 general description, it doesn't account for every single  
17 thing that's in the box.

18 So, that record is kept electronically now,  
19 online to access.

20 Q. You said it's a "general description"?

21 A. Correct.

22 Q. So, is it true that if a particular case  
23 file or detective's file is transferred to storage in  
24 New Jersey, there's no written record of that?

25 MS. MCKINNEY: Objection.

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2 A. My experience is that the written record is  
3 done electronic, electronic record in the computer.

4 Q. So, based on your knowledge of this  
5 process, if a detective's file in a case closed in 2005 or  
6 2006 were sent to this New Jersey company, there would not  
7 be a written record of that particular case file being in  
8 storage in New Jersey?

9 MS. MCKINNEY: Objection.

10 A. So, the boxes are generally labeled like  
11 case number one through 50, case number 51 through whatever  
12 fits in the box. The numbers are all over the place,  
13 depending on the size of the files. And that would be how  
14 you would -- could locate which box or particular file it  
15 was, the beginning number and end number.

16 Q. Let me ask you about the particular search  
17 for the detective's file that you undertook in this case.

18 I may refer to Exhibit 1, which is your  
19 Declaration.

20 So, according to your Declaration, you  
21 searched first in the precinct house for the --

22 A. Yeah.

23 Q. -- Negron detective's file?

24 A. Yes.

25 Q. And you also at some point searched in that

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2 same location for the Caban and Guartan detective's file?

3 A. Yes.

4 Q. And you didn't find either of those files  
5 in the 104th Precinct?

6 A. I did not.

7 Q. You then learned that paper records from  
8 the 104th Detective Squad were delivered to a storage  
9 facility in New Jersey sometime in 2015?

10 A. Correct.

11 Q. How did you learn that?

12 A. So, I had knowledge that a lot of stuff had  
13 been moved there, it just kind of slipped my mind. So,  
14 when I received a call asking for an additional search, it  
15 just kind of like -- mid-conversation, I was like "oh,  
16 yeah, you know what, they could be over in Jersey."

17 So, I was able to gain access to that  
18 system and search the list of all the boxes, which was a  
19 lot, and find some boxes that were labeled 2005 detective  
20 squad cases or words to that effect, that indicated to me  
21 that they were the files from the squad.

22 Q. Did the label indicate to you that it  
23 contained cases that were closed in 2005?

24 MS. MCKINNEY: Objection.

25 A. So, I made the assumption that they were

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2 closed, because it was 2005. But it didn't -- I don't  
3 believe it said either way.

4 Q. Well, did you form a belief that those  
5 particular boxes might contain the case files for the  
6 Negron and Caban, Guartan investigations?

7 MS. MCKINNEY: Objection.

8 A. Yes.

9 Q. Why did you believe that, based on that  
10 label?

11 MS. MCKINNEY: Objection.

12 A. Based on the -- I believed it because it  
13 listed the detective squad case numbers and that they were  
14 from 2005. So, I believed that they were -- you know,  
15 there was a good chance that they were in there.

16 Q. So, the "2005", to your understanding,  
17 refer to cases that were open in 2005?

18 A. Yes.

19 Q. And you write in paragraph eight of your  
20 Declaration, that you "determined that 19 boxes delivered  
21 to the New Jersey storage might contain the case files in  
22 question."

23 A. Yes.

24 Q. How did you come to that determination?

25 A. So, there was -- I searched the spreadsheet

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of boxes. And I looked for several keywords, 2005, detective, squad. And I -- based on that search of that spreadsheet, I made the determination that these specific 19 boxes were the ones that contained detective squad files for that time period.

Q. And you reviewed the contents of all 19 boxes?

A. Well, so I didn't read every page because it's 19 boxes. But I reviewed the contents of each box individually, and looked for what I believed would be corresponding case numbers to the 61's or 61's numbers labeled on the individual folders that were in the box.

And from that search I located -- it's the attachment to this, which was the last page of the attachment. So, this was the only file that I located. It was in relation to a found deadly weapon, and this is a DD5 or complaint follow-up, that basically closes this case into another case. And this was one of the 61 numbers that I was asked to search for.

Q. And you're referring to the last page of Exhibit 1, which is Bates stamped DDF3060?

A. Yes.

**Q.** How about the previous three pages, which are Bates stamped DDF3057 to 3059. where did you get those?

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A. So, those were also in there.

So, the way this was in there, it was a printed copy of this complaint report. And stapled to it was this one copy. It was in there alone, not in a file or anything. It was just those four pieces of paper total.

Q. They were floating freely in the box, they weren't in any particular case file?

A. Right, just to give some context to it.

So, there was files and then there was some 61's like this, where -- because what happens is sometimes a case gets opened and it gets closed into another case. Or it might have been opened, it shouldn't have been, it was left open by patrol. In which case, it might just require one DD5.

Those were kind of all put together in -- kind of like -- I don't want to say in the back of the box, but behind the files. Because there was no individual case files, no other documents to it.

**Q.** Again, I just didn't fully understand how it was that you determined that these documents, DDF3057 to DDF3060, were responsive to the request that you received?

MS. MCKINNEY: Objection.

A. So, at some point it was communicated to me that this complaint number "983", was part of this search. So, when I located that, I determined that it was related

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2 to this case.

3 Q. I want to go back for a minute to ask you a  
4 specific question about a topic we previously discussed.

5 Did you inquire as to whether any record  
6 was made of either the Negron case file or the Caban,  
7 Guartan case file, being delivered to some location outside  
8 of the 104th Precinct?

9 MS. MCKINNEY: Objection.

10 A. Well, the inquiry would have been checking  
11 that GRM.

12 Just like, who would I ask?

13 I don't know who you're implying I would  
14 ask.

15 Q. Are you aware of any specific record being  
16 made, that those two case files in particular were  
17 delivered to a location outside the precinct?

18 MS. MCKINNEY: Objection.

19 Q. Any record identifying those case files?

20 A. The only record was -- what I searched was  
21 the GRM database, because that -- those boxes contain what  
22 I -- or where I believe that the file would have gone after  
23 the case was closed.

24 So, that was the inquiry I made.

25 Q. In your review of those 19 boxes, did they

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2 contain detective's files for other investigations that  
3 began in 2005?

4 MS. MCKINNEY: Objection.

5 A. Yes.

6 Q. Can you think of any explanation for why  
7 those boxes contained other investigations from 2005, but  
8 not the Negron or Caban, Guartan files?

9 MS. MCKINNEY: Objection.

10 A. What, are you asking me to speculate as to  
11 where the file is?

12 Q. I'm just asking if you can think of any  
13 conceivable explanation --

14 MS. MCKINNEY: Objection.

15 Q. -- in your experience --

16 A. In my experience?

17 Q. -- or based on your knowledge?

18 A. In my experience and knowledge, if the file  
19 isn't in that box, either the district attorney has it, the  
20 detective that investigated the case has it. That's really  
21 it. I mean, you know, or it was inadvertently disposed of.  
22 Those would be like the only three reasonable things I  
23 could think of.

24 Q. Did you inquire as to the district  
25 attorney's office, about whether they had the file?

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2 MS. MCKINNEY: Objection.

3 A. I didn't.

4 MR. LOUP: Withdrawn.

5 Q. Did you inquire as to the district  
6 attorney's office, whether they had either the Negron or  
7 Caban, Guartan files?

8 MS. MCKINNEY: Objection.

9 A. No.

10 Q. Did you inquire of the case detective or  
11 case detectives, as to whether they had either of the  
12 Negron or Caban, Guartan detective's files?

13 MS. MCKINNEY: Objection.

14 A. No.

15 Q. In paragraph ten of your Declaration, you  
16 write that you "believe" you "conducted a complete and  
17 exhaustive search for the Negron case file."

18 A. Yes.

19 Q. Do you also believe you conducted a  
20 complete and exhaustive search for the Caban, Guartan case  
21 file?

22 MS. MCKINNEY: Objection.

23 A. Yes.

24 Q. And you haven't located either of those  
25 files?

1 S. WEISS

2 A. No -- well, I mean, aside from this, which  
3 is related, no.

4 Q. Aside from the documents we discussed  
5 attached to Exhibit 1?

6 A. Correct.

7 Q. Based on your testimony today, you believe  
8 that the files must either be in the possession of the DA's  
9 office, in the possession of the detective, or else they  
10 were inadvertently destroyed?

11 MS. MCKINNEY: Objection.

12 Q. You can answer.

13 A. Yes, that would be my belief as to where  
14 they would be.

15 Q. After reviewing the boxes from New Jersey,  
16 did you make any efforts beyond that to find out what  
17 happened to the Negron, Caban, or Guartan detective's file?

18 MS. MCKINNEY: Objection.

19 A. Yes.

20 Q. What efforts?

21 A. That was the criminal records search  
22 request.

23 Q. Did you make any other efforts?

24 MS. MCKINNEY: Objection.

25 A. No -- well, I take that back.

1 S. WEISS

2 I searched that records room again, just to  
3 make sure there was no -- I searched the records room in  
4 the precinct a second time, just to make sure I didn't miss  
5 anything down there.

6 MR. LOUP: Off the record.

7 (Whereupon, a short recess was taken.)

8 MR. LOUP: Back on the record.

9 Q. First, I want to refer you, Lieutenant, to  
10 Exhibit 1, in that final page. It's Bates stamped DDF3060.

11 A. Yes.

12 Q. Do you see at the bottom, the very bottom,  
13 it says "first copy criminal records section, second copy  
14 unit referred to, third copy Borough Robbery Squad"?

15 A. Yes.

16 Q. You mentioned earlier that these DD5's in  
17 2005 and 2006, had carbon copies on the back?

18 MS. MCKINNEY: Objection.

19 A. Yes.

20 Q. Is that what those are referring to, in  
21 your understanding?

22 MS. MCKINNEY: Objection.

23 A. Yes.

24 Q. Where it says "second copy unit referred  
25 to", what is your understanding of what that means?

1 S. WEISS

2 A. So, that would be if the case was referred  
3 to another unit. So, if -- say a squad started an  
4 investigation into a crime and determined it was part of a  
5 pattern that was being investigated by another unit, then  
6 all of these reports would be forwarded to that other unit.

7 Q. But that would only be if the case in fact  
8 was --

9 A. Was -- yeah, that was -- right.

10 Correct, only if it was forwarded.

11 Q. And it says "third copy Borough Robbery  
12 Squad", right?

13 A. Yes.

14 Q. What is your understanding of why that's  
15 there?

16 A. I have no idea.

17 Q. Well, do you agree that it appears to  
18 indicate that a third copy of the DD5 would be forwarded to  
19 the Borough Robbery Squad?

20 MS. MCKINNEY: Objection.

21 A. Yes.

22 Q. You don't know if that was done routinely?

23 MS. MCKINNEY: Objection.

24 A. I don't know.

25 Q. In searching for the Negron and Caban,

1 S. WEISS

2 Guartan detective's files, did you check with the Borough  
3 Robbery Squad --

4 MS. MCKINNEY: Objection.

5 Q. -- to see if they had the files?

6 A. I didn't.

7 Q. Did you try to find out whether either case  
8 had been referred to another unit?

9 MS. MCKINNEY: Objection.

10 A. Well, I know it hadn't been.

11 Q. You knew neither case had been referred to  
12 another unit?

13 A. Right.

14 Q. How did you know that?

15 A. Just in my conversations leading up to the  
16 search of this file. It was a case that was investigated  
17 by the 104th Detective Squad, an arrest was made by 104th  
18 Detective Squad. So, that's where the case remained.

19 Q. Okay.

20 We spoke earlier about the criminal records  
21 section.

22 A. Yes.

23 Q. I believe you testified that you spoke to  
24 somebody there when you made your request, but you didn't  
25 remember the name of the person you spoke to?

1 S. WEISS

2 A. Correct.

3 Q. I don't believe I asked you, but did you  
4 make two separate requests to the criminal records section;  
5 that is one for the Negron documents and one for documents  
6 related to the Caban, Guartan investigation?

7 MS. MCKINNEY: Objection.

8 A. Yes.

9 Q. Did you speak to the same person when you  
10 made both requests?

11 A. The second time I -- the second request, I  
12 didn't speak to anybody, I just sent the request via email.  
13 The first time was because I wasn't exactly sure how to  
14 request, and that's the only reason I spoke to somebody.

15 Q. Did you receive a response to your email?

16 A. I did.

17 Q. Do you remember who the response was from?

18 A. No.

19 Q. You also testified about your understanding  
20 of criminal record section, that the criminal record  
21 section had a procedure of retaining records via  
22 microfilm -- using microfilm.

23 Is that correct?

24 MS. MCKINNEY: Objection.

25 A. Yes.

1 S. WEISS

2 Q. To your understanding, were the records  
3 transferred to microfilm contemporaneously with the receipt  
4 of those records or at a later date?

5 MS. MCKINNEY: Objection.

6 A. I don't know.

7 Q. What is the basis of your understanding of  
8 what the criminal record section does?

9 MS. MCKINNEY: Objection.

10 A. Past experience with them.

11 Q. Any particular past experience?

12 MS. MCKINNEY: Objection.

13 A. Yes.

14 I mean, we're going to be discussing  
15 another criminal case here, so I don't know.

16 Q. That's okay, I won't ask you any details  
17 about the criminal case.

18 A. So, I needed to request records for a case  
19 that pre-dated ECMS. And I made a request through them  
20 several years ago now. But that's how I became aware that  
21 they did keep some files on microfilm related to cases.

22 Q. And you received the records you were  
23 searching for in that case?

24 A. Some of them.

25 Q. Do you know what policies or routine

1 S. WEISS

2 practices the 104th Precinct followed, regarding document  
3 retention and destruction, before you became the commanding  
4 officer there in 2019?

5 MS. MCKINNEY: Objection.

6 A. I mean, I can draw a reasonable conclusion  
7 from what I found, which is that they seemingly kept  
8 detective case files in the records room and eventually  
9 they were sent to storage in New Jersey once that policy  
10 was put in effect.

11 There's a lot of boxes in storage. So, it  
12 seems like they kept a great deal of records.

13 Q. Well, other than your observations of the  
14 storage of records in the basement of the 104th Precinct,  
15 have you obtained any knowledge of what the 104th  
16 Precinct's policies and practices were for storing records  
17 before you arrived?

18 MS. MCKINNEY: Objection.

19 A. They would be in accordance with the  
20 Administrative Guide Procedure 32205, which kind of  
21 dictates how records should be stored in a precinct. So,  
22 that would apply to every precinct in every borough.

23 So that would be Exhibit 4.

24 Q. And the copy of that Administrative Guide  
25 that you produced here today, went into effect when?

1 S. WEISS

2 A. It went into effect in December 8th, 2018.

3 That was the date that this was issued.

4 Q. Are you aware of any predecessor versions  
5 of that same Administrative Guide, that were in effect  
6 before that date?

7 MS. MCKINNEY: Objection.

8 A. I'm not specifically aware of a prior  
9 procedure for...

10 Q. Are you aware of whether a prior procedure  
11 was or was not in effect?

12 MS. MCKINNEY: Objection.

13 A. Again, I can only speak on my experience.  
14 My belief, and this is just based on my experience, is that  
15 there was procedures in effect and this was just some type  
16 of update to a procedure that was likely already in effect.

17 But again, that I can't say 100 percent.  
18 That's my belief.

19 Q. What's the basis of that belief?

20 MS. MCKINNEY: Objection.

21 A. Our policies and procedures are regularly  
22 updated. Some are wholesale changes, some are just to  
23 remove, say the distribution. Because now everything is  
24 electronic, so they kind of like -- they updated  
25 everything, and they added the computer component to it.

S. WEISS

So, some of them are like I said, full changes, complete policy changes. But they're routinely changed. So, if you look through the guide, these issue dates are all different through the procedures, because there's interims orders issued that amend these policies pretty regularly.

Q. But you don't have knowledge of whether a printed policy existed, before the dates on Exhibits 2 through 6, that govern the retention or destruction of documents --

MS. MCKINNEY: Objection.

Q. -- in the NYPD?

A. I don't have specific knowledge, no.

MR. LOUP: Off the record.

(Whereupon, a short recess was taken.)

MR. LOUP: Back on the record.

Q. Lieutenant, first I want to direct your attention to Plaintiff's Exhibit 3.

A. Okay.

Q. That's a memorandum you referred to earlier, dated July 27th, 2017?

A. Yes.

Q. It concerns the destruction of detective case files in particular, right?

1 S. WEISS

2 A. Yes.

3 Q. Can we just review at the bottom, where it  
4 says "felonies other than special", those four lines, just  
5 read them to yourself.

6 (The witness complies.)

7 A. Okay.

8 Q. It's your understanding, based on this  
9 memorandum that the NYPD policy is, a detective case files  
10 for all felonies should not be destroyed at all?

11 MS. MCKINNEY: Objection.

12 A. It's my understanding that as of  
13 July 27th, 2017, that was the policy.

14 Q. Thank you for clarifying that for me.

15 Do you know whether this was the policy,  
16 before July 27th, 2017?

17 MS. MCKINNEY: Objection.

18 A. I don't know.

19 Q. So, you don't know, as of 2005 or 2006,  
20 whether the NYPD policy was that detective's case files or  
21 felonies should not be destroyed at all?

22 MS. MCKINNEY: Objection.

23 A. Correct.

24 Q. Do you know whether there was any other  
25 policy, as to whether detective's files for a felony could

1 S. WEISS

2 ever be destroyed?

3 MS. MCKINNEY: Objection.

4 A. I don't know.

5 Q. Do you know what policy the 104th Precinct  
6 has followed, at any time since 2005, regarding the  
7 destruction of detective's case files in felonies?

8 MS. MCKINNEY: Objection.

9 A. I know from my experience of going through  
10 those 2005 boxes, that there's a good number of files in  
11 there. That there was a mix of misdemeanors and felony  
12 files.

13 So, I don't know if there was a policy or  
14 if it was just common practice. But they did retain a  
15 great deal of files.

16 Q. But you don't know what their policy was  
17 regarding --

18 A. No, that I don't.

19 Q. Sorry, I just want to make sure I get that  
20 question fully on the record.

21 But you don't know what the 104th  
22 Precinct's policy was before 2019, with respect to the  
23 destruction of detective's file and felonies?

24 MS. MCKINNEY: Objection.

25 A. Before 2017.

1 S. WEISS

2 Q. Before 2017?

3 A. Correct.

4 Q. Do you know whether the 104th Precinct  
5 intentionally destroyed any detective's files, before 2017?

6 MS. MCKINNEY: Objection.

7 A. I don't know.

8 Q. Are you aware of whether there are any  
9 records of detective case files being destroyed in the  
10 104th Precinct, since 2005?

11 MS. MCKINNEY: Objection.

12 A. I'm not aware of any records, no.

13 Q. I don't have any more questions.

14 (Whereupon, at 12:26 P.M. the Examination of  
15 this witness was concluded.)

16

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17

18 LIEUTENANT STEVEN WEISS

19 Signed and sworn to  
20 before me, this \_\_\_\_\_ day  
21 of \_\_\_\_\_ 2019.

22

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23 Notary Public

1  
2 EXHIBITS  
3

4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
NUMBERS	DESCRIPTION	PAGE																			
1	7-page Declaration of Lt. Steven Weiss dated 11/27/2019	16																			
2	6-page Operation Order dated 3/13/2017	29																			
3	2-page NYPD memo dated 7/27/2017	30																			
4	2-page Administrative Guide, dated 12/8/2017	30																			
5	4-page Administrative Guide, dated 1/4/2019	30																			
6	1 page Administrative Guide, dated 1/4/2019	30																			

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3

4 EXAMINATION BY

PAGE

5 MR. LOUP

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6  
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8                   I N D E X     O F     R E Q U E S T S

9 DESCRIPTION

PAGE

10 Defendant's reservation of rights to  
mark any exhibits marked as of today's  
11 date confidential, to the extent it is  
later learned that they are not public  
12 information by the NYPD

29

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## C E R T I F I C A T E

STATE OF NEW YORK )

11

COUNTY OF NEW YORK

I, BONITA RICHARDS, a Notary Public for and  
within the State of New York, do hereby certify:

That the witness whose examination is

hereinbefore set forth was duly sworn and that such examination is a true record of the testimony given by that witness.

I further certify that I am not related to any

of the parties to this action by blood or by

marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 17th of December 2019.

Bonita McRae

## BONITA RICHARDS

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